Developing the next PSA Code of Practice – Discussion Document

Q1 Do you agree with our proposed overall approach to the review? Please provide an explanation as to why you agree

We agree with the approach to the consultation process. We support the initiative to raise industry standards based on prevention rather than retrospective action. Within this comes significant operational changes as to how businesses conduct themselves within the Phone-paid market and placing more onus on the Mobile Network Operators to take action at a network level for the small number of bad players operating within the market.

Q2 Is there anything else we should be considering?

It would be prudent to have more consumer feedback regarding all service types within the market. There have been multiple changes over the years regarding subscription services, and online payment services, with varying degrees of negativity, however there is no positive feedback regarding the growth sectors such as app stores, broadcast and charity whereby we believe no significant change should be made to the operation and management of such services.

Q3 Do you agree with our assessment of the market? If not, why not? Is there anything else you think we need to consider

We agree with the market assessment

Q4 Do you have any evidence of the market to share with us that you think would support our assessment?

We can support that there has been significant growth in the broadcast and charity sector, contributing to overall growth within the phone-paid services market. We believe that key emerging sectors are supported with flexibility for growth.

Q5 Do you agree with our assessment, based on research, of consumer behaviours, experience and expectations?

We agree with the assessment, there is a general comment regarding the stat that half of consumers involved in the research said that phone-paid services can be misleading or that payment methods can be confusing. This research was conducted in 2014 prior to all the significant changes that have been implemented regarding consent to charge and pin verification. It would seem only appropriate that this research is re-run with a new consumer panel to determine if this is still the case with the current conditions in place

The secondary research in 2016 only explored complaints within the online competition and adult services sectors, so again this is not assessing the growth areas and the traditionally low level of complaints and concerns.

Q6 Do you have any other evidence in this area that we need to consider?

We are happy to share customer care statistics with the PSA for the last 12 months to demonstrate that we experience an extremely low level of contacts for the services we run. This is split across multiple
sectors and reinforces our belief that there are a small number of services operating within the phone-paid services market which are causing consumer harm rather than the majority.

**Q7 Do you agree with our assessment of what the future holds? Please provide an explanation as to why you agree or disagree.**

We agree with the assessment

**Q8 Are there market developments which we have not factored into our assessment? How do you see these influencing the phone-paid services sector and associated regulatory challenges?**

Nothing to comment

**Q9 Do you agree with our proposed assessment framework? Please provide an explanation as to why you agree or disagree?**

We agree with the assessment framework, however, we believe there needs to be clear reciprocal responsibilities for the PSA in terms of investigations and sanctions. Currently the PSA can launch an investigation into an organisation whereby there is perceived consumer harm with no outwardly communicated deadlines to the industry in terms of investigation timelines and resolution. We have seen instances whereby services have continued to run for several years when the PSA has been made aware of consumer harm. This must be addressed. If the PSA is made aware of any service where there is more than x number of complaints, or internal investigations highlight a potential compliance issue, this should be in the first instance flagged to the Aggregator to perform any checks and additional due diligence to ensure the service and promotions are operating within the COP.

It is not reasonable to allow non-compliant services to continue to run, increasing consumer harm, whilst the PSA investigates. An additional step within the regulatory assessment should be introduced as a more informal route to allow compliance issues to be addressed rather than allowing more consumers to be impacted over a prolonged period of time.

We have always had a good relationship with the PSA and have openly shared information around technical issues or compliance concerns to help protect the market and promote good business. We would like to see the PSA adopting a similar stance back to aggregators as an “early warning system” so any issues can be cut off at the pass. This can only have a positive impact on complaint levels and ensure confidence in phone-paid services.

We would like to see the number checker and complaint stats being issued to Aggregators again as this is really useful data to determine at an early stage if consumer harm is occurring.

**Q10 Are there factors we have not taken into account which we should?**

There is currently only guidance regarding ongoing due diligence and monitoring, which is very open to interpretation by the Aggregator. We rate services based on risk level and our ongoing due diligence in terms of service reviews is based on that risk factor. However, the PSA might completely disagree with our model and determine that there is not sufficient due diligence and risk control. A minimum set of standards in terms of what is required from the signing of a new customer through to ongoing due diligence should be shared to ensure the whole industry has a basic minimum requirement determined by clear measured conditions from the PSA. The PSA must sign off individual aggregator’s due diligence
and risk control policies as being sufficient so that they can remain confident in their processes or make any adjustments required.

**Q11 Do you agree with our proposed initial thinking in terms of proposed changes to our regulatory strategy and approach? Please provide an explanation as to why you agree or disagree.**

We agree with the proposed approach. However, as above we think there needs to be some additional thought around prevention rather than cure, in terms of a more open path between Aggregators and the PSA without fear of punishment to continue to operate good services.

A major issue the PSA has always encountered is recouping fines from companies, who dissolve the business and then pop up under a new entity. If the PSA can improve their investigation speed and deliver sanctions in a more timely manner, the Aggregator will still have unpaid funds on account which would increase the success rate in terms of the settlement of fines.

As there is discussion around passing the responsibility down the value chain, it is imperative that the PSA act quickly in terms of instructing Aggregators to with-hold funds for any services that are under investigation.

**Q12 What are your views with regards to how we can best ensure that all firms operating in the phone-paid service sector will follow, and be held to, the same standard of professionalism?**

This has to come down to the Aggregator / MNO / L1 community. There has to be responsibility for each member of the value chain to ensure that they only contract with reputable businesses. There has been an increase in the number of issues caused by internationally registered businesses, where they sit outside of the PSA’s reach in terms of regulatory action. Whilst it would not be realistic to say you can only contract with UK companies, there needs to be a greater level of due diligence and risk control on these organisations to ensure they do not disrupt the UK market.

The new registration scheme is there to ensure that all services are registered and visible, are there any checks by the PSA to ensure the services are compliant and is there any flag system which highlights if a company is not based in the UK and is therefore a perceived higher risk to consumers?

Regarding the introduction of Bonds, we disagree with this entirely, new entrants to the market are not going to commit to bonds to use phone-paid services. We are already dealing with less beneficial commercial terms than other payment mechanics, so this would be a huge blocker and detrimental to the growth of the industry.

**Q13 What are your views with regards to developing appropriate Pre-Purchase Standards?**

We believe there are already clear Pre-purchase standards in place, through recent Special Conditions and through MNO COPs. However, as iterated throughout this response, a number of requirements are open to interpretation by the merchant and / or Aggregator.

Guidance such as clear and proximate pricing is an individual perception as to whether something is easy to understand. An individual who has worked in the industry for many years would have a very different view as to what is clear and proximate compared to an end consumer.
Q14 What are your views with regards to developing appropriate Purchase Standards?

There are already a number of clear requirements for purchase standards including the addition of the Security Framework and annual penetration testing, We do not believe anything further is required.

Q15 What are your view with regards to developing appropriate Post Purchase Standards?

Post Purchase standards need to be improved across the value chain to ensure that consumers can easily identify a merchant and seek recourse where appropriate.

The industry has been asking the MNOs for direct to bill refunds for many years so that consumers can have a full refund, back via the mechanic they purchased through, without having to receive a cheque, post office SMS or bank transfer. Many consumers are not happy to provide bank details or address details to merchants who they already believe have charged them incorrectly.

The MNOs are already able to support the reversing of transactions for DCB but they are not able to offer PSMS refunds / crediting across the board as yet. We believe this should be included as a requirement to ensure consumer satisfaction.

We disagree with the suggestion of “no quibble” refunds. Users who have interacted with a service but then decide they don’t want to pay should not be given a refund irrespective. This is a very dangerous suggestion for the broadcast and media sectors in particular, whereby competitions could be invalidated or winner picking compromised due to the promise of a “no quibble” refund. Refunds should only ever be issued if there is no evidence of consent to charge, a technical issue resulting in overcharge and / or a gesture of goodwill refund determined by the merchant.

MNOs need to improve bill descriptors for all services especially PSMS, many MNOs still have unhelpful terminology such as “Third Party Charge” or an internal numerical reference which means nothing to a consumer. If a service is clearly described with a merchant help number on the bill, contacts to both the MNOs and PSA would be reduced, as many consumers just don’t remember what the charge relates to.

MNO customer care handling has vastly improved, however, there are still issues with some MNOs whereby the contact centres clearly have no understanding of Phone-paid services, how they work and what the consumer has done in order for the charge to be applied. There is a requirement for training to be done to correct this so consumers don’t end up having to call multiple contact points to understand their charges.

Q16 What are your views with regards to how we can make our investigations and enforcement procedures more effective?

Answered within question 11

Q17 What are your views with regards to how we might achieve better outcomes for consumers and uphold the reputation of the market through more effective deterents by considering the range of sanctions available to us?

Repeat offenders need to be named and shamed. There are Aggregators / L1s in the market who continue to onboard services that are causing consumer harm, often the same merchants under different guises. It is not sufficient to add them within an adjudication document. The PSA should (if they don’t already) share a list with the MNOs of repeat offenders and the services that are most complained
about / under investigation. This then allows the MNOs to address whether they should be allowed to continue to run on their network.

The introduction of penalty notices to merchants, for continued non-compliance could be a significant deterrent particularly if the amount increased for each recurrence.

**Q18 What are your views on our existing funding model? Does it remain an effective model? Or do you think alternative funding models may provide a more sustainable approach going forward?**

We disagree with the proposed increase in the Levy. There is clear evidence that the regulatory changes over the years have significantly reduced customer care complaints, and any increase in the Levy will have a commercial impact on the industry and restrict market growth.

The entire discussion document revolves around improving the regulatory standards, with this in mind there should be a review of the PSA budget and a proactive discussion with industry to identify an approach to reduce costs.

We have fed into the Aimm response to this proposal and would welcome further discussion with the PSA to address the budget moving forwards.

**Q19 Do you consider the current categories of defined providers capture all relevant providers involved in the provision of phone-paid services and appropriately spreads regulatory responsibility throughout the value chain? Please provide an explanation as to why you agree or disagree?**

Pin Verification Providers should also be included within the value chain.

**Q20 Do you think the current regulatory framework remains fit for purpose? Please provide an explanation as to why you agree or disagree**

The current regulatory framework works for good players in the market, however, the lack of enforcement and sanctions on the polluters in the market is detrimental to the overall industry.

There should be division in requirements based on technical and operational standards being met by Aggregators, if you cannot provide sufficient evidence that you are fulfilling your obligations you get downgraded and are subject to the proposed audits. There needs to be greater accountability across the value chain from MNOs disconnecting problem services to Aggregators refusing to onboard them in the first place.

**Q21 Are there any areas of potential change proposed in this document which may have an impact which should be considered? If so, please let us know, including any evidence you have as the likely impact**

The proposal to incorporate a double opt in for all services, including Premium SMS, would have a hugely detrimental impact on the Media, Broadcast and Charity services.

The Media, Broadcast and Charity sectors within the phone-paid market have demonstrated significant growth over the last 10 years. These services do not cause consumer harm and complaint levels are almost non-existent, as demonstrated in your regular reports around consumer complaints by sector. We would hope that broadcast and charity services which require an MO opt in to interact would be excluded from any such consideration.